

WITNESS INDEX

WITNESSES

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EXHIBIT INDEX

<u>NUMBER</u>	<u>FOR</u> <u>IDENTIFICATION</u>	<u>IN</u> <u>EVIDENCE</u>
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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE FRED R. NENE: This is the
3 time scheduled for a hearing on the complaint filed by the
4 Commission of Bureau of Transportation and Safety against
5 T.R. Trucking and Excavating, Inc.

6 The complainant is here represented by Attorney R.K.
7 Smith, and the respondent is here represented by Attorney
8 William Gray. My name is Fred Nene, and I'm the
9 administrative law judge assigned to this case, which is at
10 Docket No. A-117548C0601. It involves various violations
11 alleged.

12 Before we start, I do have a motion that was filed by
13 the Bureau of Transportation and Safety on January, I would
14 say, 25th, and that is to amend the complaint. Is there any
15 objection to the amendment?

16 MR. GRAY: No, Your Honor. At the time that I
17 received the motion to amend the complaint I advised
18 Attorney Smith, I believe in writing, that I was not going
19 to object to the motion and would indicate that at the
20 commencement of the hearing today.

21 JUDGE NENE: So then I will grant the motion to amend
22 the complaint, and we'll make that part of the future order.
23 Before we went on the record here, the parties indicated
24 that they had been in negotiations and discussing some way
25 to resolve this amicably and they asked that they be given

1 some more time to do so.

2 I think it's in the interest of all the parties if we
3 allow that to proceed. So we'll go off the record and let
4 the parties discuss without my being present in the hearing
5 room.

6 MS. SMITH: Thank you, Your Honor.

7 (Discussion held off the record.)

8 JUDGE NENE: We're back on the record now. The
9 parties have had a chance to discuss this matter. I'll ask
10 Mr. Smith, do you have anything to say?

11 MR. SMITH: Yeah, just sort of prefacing our remarks
12 here. By the way, this is Kriss Brown. He's one of the new
13 attorneys in the law bureau. This is Judge Nene. Just as
14 an introduction, we have Bill Gray and myself. We have
15 Jerry Clark is the Bureau of Transportation and Safety, the
16 head of the safety office. He's our safety guru. We also
17 want to--

18 MR. GRAY: This is Bernard Schilling, who is former
19 U.S. DOT safety officer and is now a consultant for the
20 motor carrier industry on issues of safety. Many, many
21 years experience in safety.

22 MR. SCHILLING: End of this year it will be 48 years
23 in law without my degree yet.

24 MR. SMITH: What we were looking at, Your Honor, our
25 position, of course, my position has always been looking at

1 trying to come up with an appropriate fine that will secure
2 future compliance. In this proceeding we had an opportunity
3 to discuss what the carrier has done since the audit, the
4 safety audit, that led to the complaint.

5 Now, the complaint came out with some rather
6 excessively high numbers. The safety office-- The way
7 we're doing things, the way BTS is doing things now, the
8 whole process would come down to the figure of the 38,200
9 requested after granting our motion to amend.

10 What we were meeting for at length here was to see
11 whether the company had taken appropriate steps since the
12 audit and the complaint to try and improve their safety
13 program. We met in length, and we've come to the agreement,
14 yes, they have. They've taken the reasonable steps.

15 That will be nailed down in a specific attachment that
16 Mr. Gray will be preparing which will memorialize the
17 practice and procedures now in place by the company. That
18 will be attached to a formal settlement agreement that we
19 will present.

20 I'm saying here in this case, Your Honor, I think we
21 need 60 days because everyone involved for the carrier as
22 well as our people would like to review the memorialization
23 of their safety program that was and has and will address
24 the violations that were alleged in the bureau's complaint.

25 So what our plan is is to present, I hate to say it,

1 April 1st, 60 days, Your Honor, a settlement plan that the
2 law bureau and Mr. Gray will sign which will also have an
3 attachment of the newly implemented or the now implemented
4 safety program that will deal with it so when the Commission
5 ultimately looks at this they'll say yes, you know, they're
6 dealing with the problems adequately.

7 So we've reached, we've agreed to a fine in this case
8 of 15,800. They're going to prepare this safety--
9 Basically it's just putting in writing everything they're
10 doing now to address these problems.

11 Plus we're agreeing that there will be a reaudit
12 within no earlier than 90 days after entry of the
13 Commission's final order in this proceeding just for
14 verification purposes that they, in fact, have carried out
15 what they have told us today during our prehearing
16 conference and what they've stated in their plan that will
17 be attached to the settlement agreement.

18 So the plan is to send this settlement agreement and
19 attachments to you no later than 60 days from today. It's
20 just that we're asking for a little longer because we want
21 everyone involved on both sides to look to the agreement and
22 to the plan.

23 JUDGE NENE: That 60 days includes Mr. Gray's summary?

24 MR. SMITH: Yeah, the rest of this month and the rest
25 of next month. We believe this settlement will be in the

1 public interest. When the Commission ultimately looks at it
2 they'll see, yeah, it looks like the company has taken the
3 type of steps to address the problems.

4 So that's our plan this morning, Your Honor.

5 JUDGE NENE: Mr. Gray?

6 MR. GRAY: I do not disagree with what Mr. Smith has
7 said. I concur that that's what we had agreed to.

8 MR. SMITH: I just want to commend the other side for
9 sitting down and talking openly and cooperating with us.
10 They did cooperate during the audit. Part of the problem in
11 this case was, Your Honor, the initial fine requested. That
12 has been since addressed. But we believe this is in the
13 best interest of all concerned.

14 JUDGE NENE: I hope so, because it looked to me when I
15 read the initial filing that you really wanted to put this
16 fellow out of business.

17 MR. SMITH: That's not-- We usually look for a fine
18 and whatever it's going to take to get a company to
19 straighten up and fly right. We want future compliance.
20 There's been a lot of change of procedures within the Bureau
21 of Transportation and Safety since this case was initiated
22 and a predecessor case that Judge Nemec had heard with Bill
23 Gray and myself last year about another large fine request
24 out of a safety audit.

25 So Mr. Clark, Jerry Clark, is now the head of the

1 safety office. Things are changed, changing for the better,
2 and we aren't going to see fines. But in this case I
3 believe we've reached an agreement.

4 JUDGE NENE: Very good. It's the public interest and
5 the public safety that's the concern with the Commission, as
6 you know.

7 MR. SMITH: Right.

8 JUDGE NENE: I'm glad that you're satisfied with the
9 prospective conduct of the--

10 MR. SMITH: Sometimes, Your Honor, you know, it's
11 getting all the parties around the table and seeing we're
12 really after the same common goal. This will help improve
13 their company, it helps protect the public safety, and it's
14 a win-win for everybody. But sometimes it takes just
15 face-to-face contact and just hashing things out. So we
16 believe the ultimate settlement is a total good for the
17 public interest.

18 JUDGE NENE: Very good. We will then expect to
19 receive something within 60 days.

20 MR. SMITH: Very good, Your Honor.

21 JUDGE NENE: Thank you all for working this out. It's
22 in the best interest of everybody if you reached a decision
23 on your own rather than have it forced on you by the
24 Commission. Thank you very much.

25 MR. GRAY: Thank you, Your Honor.

1 MR. SMITH: Thank you.

2 (Whereupon, at 11:16 a.m., the hearing adjourned.)

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8 C E R T I F I C A T E

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10 I hereby certify, as the stenographic reporter, that
11 the foregoing proceedings were taken stenographically by me,
12 and thereafter reduced to typewriting by me or under my
13 direction; and that this transcript is a true and accurate
14 record to the best of my ability.

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